

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 863 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUSHILA KANWAR POONAM KUNWAR

Versus

STATE OF GUJARAT

Appearance:

M/S S & S ASSOCIATES for Petitioners

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 16/02/2000

ORAL JUDGEMENT

Notice. Service of Notice is waived by Mr.V.B.Gharaniya, the learned Asst. Government Pleader for the respondent no.1, 2 & 3. The petitioners seek a declaration that they as enunchs are entitled to practise the occupation of receiving alms/gifts from the public and are free to move anywhere for the practise of such occupation. A declaration is also sought that the action

of the respondent authorities restraining the petitioners from receiving alms is illegal and unconstitutional. A further direction is sought that investigation into the offences which are alleged against the respondent no.4 who is President of Nanpura Hijda Samaj, Surat may be made by the Police Authorities.

2. According to the petitioners, they were forcibly converted into enunchs by the Head of the Principal Seat i.e. respondent no.4. They have been residing at Hijdavad and paying money to the Head of the Seat by collecting alms (described as voluntary pleasure gifts) from Public on good occasions. It is stated that since the time of their conversion as enunchs, they have been practising this occupation. It is alleged that the respondent no.4 interrupted in the petitioners collecting alms and complaints had to be filed. Instances are cited alleging that the respondent no.4 through his henchmen attacked the petitioners and robbed them of their money collected by them. It is stated that the petitioners as members of the enunchs community have renounced their normal lives and have no other skills to earn their livelihood. They have therefore no option for their survival except professing demand of alms on good occasions.

3. The Learned Counsel appearing for the petitioners submitted that the petitioners are accepting alms/gifts only when they are voluntarily given and it is an age old practise which should be recognised. He also submitted that the respondent no.4 who was the Head of the Principal Seat of enunchs at Surat was behaving in an high handed manner with the aid of Police and preventing the petitioners from pursuing their occupation of receiving money from the Public on good occasions. It is contended that the petitioners have a fundamental right to practise the occupation of demanding alms for their livelihood.

4. The petitioners in effect want a seal of approval of the High Court under Article 226 of the Constitution on the practise of enunchs demanding alms. Enunchs are indeed entitled to their fundamental rights which are guaranteed to the citizens and persons under Part III of the Constitution. However, they cannot claim a fundamental right to beg in face of the provisions of the Bombay Prevention of Begging Act, 1959. Begging cannot be lifted to the level of profession. There can be no doubt that a person who is forced by circumstances to beg has to be sympathised for his plight. However, to recognise begging by enunchs as a fundamental right would

amount to recognising an illegality and might carry with it other serious evils that may harm the society. One may only refer to the provisions of Section 363(A) of the Indian Penal Code which makes kidnapping or maiming a minor for the purposes of begging a serious offence. Under Section 363(A) of the Indian Penal Code begging is defined and has the same meaning as is given to the expression in Section 2(1)(i) of the Bombay Prevention of Begging Act, 1959 under which 'Begging' means soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune telling, performing tricks or selling articles or otherwise, or entering on any private premises for the purpose of soliciting or receiving alms, or exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal etc. However, soliciting or receiving money or food or gift for a purpose authorised by any law is saved. The begging which is sought to be claimed as a vocation by the petitioners has not been authorised by any law.

5. Under Section 4 of the Bombay Prevention of Begging Act, 1959, any Police Officer, or other person authorised in this behalf in accordance with rules made by the State Government, may arrest without warrant any person who is found begging. Such Police Officer shall take or send the person so arrested to the Court and the provisions of Section 61 of the Code of Criminal Procedure apply to every such arrest. A summary inquiry in respect of persons found begging and their detention is provided for under Section 5 of the Act. If a person having been previously detained in a Certified Institution under the Act is found begging, has, on conviction to be punished by way of detention as provided in Section 6 for a period of not less than 2 years. On second or subsequent conviction, the Court can order him to be detained for a period of 10 years in a Certified Institution and may convert any period of such detention into a sentence of imprisonment extending to a like period. There are detailed provisions made in Chapter III of the said Act in respect of sentence and certified Institutions. The said Act was framed with a view to consolidate and amend the law relating to beggars for the purpose of making uniform and better provision for the prevention of begging in the State of Bombay and for matters connected therewith. It was found expedient to make uniform and better provisions for the prevention of begging as well as for detention, training and employment of beggars and their dependents in certain institutions for the custody, trial and punishment of beggar

offenders. It is therefore clear that the Court cannot recognise any such practise of receiving alms which amounts to begging. The proper course for the petitioners would be to seek administrative assistance from the Government for bringing them to the main stream of social life and to enjoy their fundamental rights by pursuing legally permissible vocations. It would be open for the petitioners to approach the State Government for their appropriate rehabilitation and if any such representation is made, the Learned AGP says, it will be decided with due consideration by the concerned authorities for taking steps for rehabilitating these unfortunate people. However, the relief sought in the petition for recognising a right to seek alms or against taking action against the petitioners where there is breach of law is wholly misconceived and cannot be granted.

6. As regards the allegation contained in para 2 of the petition that the petitioners were forcibly converted into enunchs by the Head of the Principal Seat, it appears that there is much more than what comes to the surface in this petition. The complaints have been made for various incidents before the Police Authorities and it will be for the Police Authorities to discharge their duties to inquire and investigate into the offences that are alleged and also to ascertain whether there have been offences under Section 363(A) of the Indian Penal Code. The State Government should look into the allegation of forcible conversion of the petitioners and others as enunchs by the Head of the Principal Seat and take proper action to prevent such nefarious activities. It will be for the investigating agency to look into the alleged offences and take suitable action in accordance with law. The petition is therefore rejected with no order as to costs.

(R.K.Abichandani, J)

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